

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

RICHARD ALLEN FABEL,
RODNEY ROLLNESS,
JOSHUA BINDER, and
RICKY JENKS, and
PAUL FOSTER.

Defendants.

Case No. CR06-041L

ORDER GRANTING IN PART AND
DENYING IN PART JENKS'
MOTIONS TO SUPPRESS

I. INTRODUCTION

This matter comes before the Court on defendant Jenks' "Motion To Suppress Illegally Seized Evidence" (Dkt. #284) and "Motion to Suppress Evidence Based on Franks v. Delaware" (Dkt. #297). Jenks seeks to suppress a number of pieces of evidence seized during a search of his home in February 2006. He also requests a Franks evidentiary hearing.

II. FACTUAL BACKGROUND

On February 10, 2006, Magistrate Judge Cynthia Imbrogno signed a warrant authorizing a search of the Jenks' residence in Spokane, Washington. The warrant was supported by an affidavit prepared and signed by Special Agent Stanley Meador of the Federal Bureau of

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1 Investigation. Agents executed the search on February 14, 2006. Defendant now seeks to
2 suppress four pieces of evidence seized during the search: (1) a “Church of Hate” compact disc;
3 (2) a computer; (3) ammunition; and (4) his 2002 Harley Davidson motorcycle. An evidentiary
4 hearing on the motion was conducted on January 31, 2007.¹

5 **III. DISCUSSION**

6 **A. “Church of Hate” Compact Disc**

7 Defendant argues that the seizure of the “Church of Hate” compact disc was outside the
8 scope of the warrant. The Government contends that it was properly seized as evidence of the
9 RICO offense because it tied Jenks to the location of an alleged extortion. Alternatively, the
10 Government argues that the seizure falls under the plain view exception. The Court agrees that
11 the compact disc does not fall into a category of evidence described in the search warrant. The
12 predicate act of extortion referenced by the Government in its response was not referenced in the
13 Meador affidavit or in the search warrant itself.

14 Nor does the seizure fall under the plain view exception. “To fall within the plain view
15 exception, two requirements must be met: the officers must be lawfully searching the area where
16 the evidence is found and the incriminatory nature of the evidence must be immediately
17 apparent.” Roe v. Sherry, 91 F.3d 1270, 1272 (9th Cir. 1996). The Government argues that the
18 incriminatory nature of the evidence was immediately apparent because agents were aware that
19 Jenks was involved with an extortion attempt at Ichabods, a location where the group “Church of
20 Hate” was known to have played. This, it argues, “established his tie to Ichabods.” Response at
21 p. 7. Even if agents were aware that the group Church of Hate played at Ichabods, the mere
22 possession of the compact disc is not incriminating. Jenks acknowledges that he worked at
23

24 ¹The evidentiary hearing has been continued to allow for the presentation of additional evidence
25 not available on January 31, 2007. Because the remaining evidence only concerns the seizure of the
26 Harley Davidson motorcycle, a second order addressing that particular seizure will be issued upon
completion of the evidentiary hearing.

1 Ichabods. That he owns the compact disc of a band that played there is not evidence of a crime.
 2 The “Church of Hate” compact disc shall be suppressed.

3 **B. Jenks’ Computer**

4 Jenks contends that there was no nexus between any of the crimes alleged in the Meador
 5 affidavit and Jenks’ use of his computer. In making a probable cause determination, a magistrate
 6 judge need only conclude that there is “a reasonable nexus between the activities supporting
 7 probable cause and the locations to be searched.” United States v. Fernandez, 388 F.3d 1199,
 8 1253 (9th Cir. 2004) (quoting United States v. Ocampo, 937 F.2d 485, 490 (9th Cir. 1991). In
 9 arriving at this conclusion, “[a] magistrate may ‘draw reasonable inferences about where
 10 evidence is likely to be kept, based on the nature of the evidence and the type of offense.’”
 11 United States v. Pitts, 6 F.3d 1366, 1369 (9th Cir. 1993) (quoting United States v.
 12 Angulo-Lopez, 791 F.2d 1394, 1399 (9th Cir. 1986)). Because a magistrate judge’s finding of
 13 probable cause is accorded significant deference, a reviewing court need only determine that the
 14 magistrate judge “had a substantial basis for finding probable cause.” United States v.
 15 Chavez-Miranda, 306 F.3d 973, 978 (9th Cir. 2002).

16 In this instance, Magistrate Judge Imbrogno had a substantial basis to conclude that
 17 probable cause existed to seize and search Jenks’ computer. The affidavit states that the Hells
 18 Angels kept extensive written documentation of their rules and activities and that they relied on
 19 websites to communicate with one another. Based on this information, Magistrate Judge
 20 Imbrogno could rationally conclude that evidence of RICO, fraud, and the trafficking in stolen
 21 motorcycles would be found on computers in the Jenks’ residence. The seizure of Jenks’
 22 computer was proper.

23 **C. Ammunition**

24 The defendant has withdrawn his challenge to the seizure of the ammunition. Reply at p.
 25 5. The request for suppression of the ammunition is therefore denied.

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1 **D. Franks Hearing**

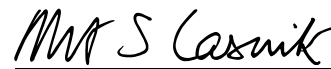
2 Defendant also seeks a Franks hearing to contest the validity of the Meador affidavit. A
 3 defendant is entitled to such a hearing only if he makes a “substantial preliminary showing that a
 4 false statement knowingly and intentionally, or with reckless disregard for the truth, was
 5 included by the affiant in the warrant affidavit, and if the allegedly false statement is necessary
 6 to the finding of probable cause.” Franks v. Delaware, 438 U.S. 154, 155-56 (1978). Jenks
 7 argues that a hearing is appropriate here because Meador’s affidavit intentionally omitted or
 8 misstated critical facts about CI-1’s background that were essential to the magistrate judge’s
 9 determinations about CI-1’s reliability. Defendant also argues that Meador’s affidavit omitted
 10 critical facts related to Jenks himself.

11 Jenks has not made a substantial preliminary showing that Meador made “intentionally or
 12 recklessly false statements” in his affidavit. Even if such a showing had been made, the Court
 13 does not believe that the omission of the allegedly misleading statements or inclusion of the
 14 alleged omissions would undermine the magistrate judge’s finding of probable cause.
 15 Defendant’s request for a Franks hearing is therefore denied.

16 **IV. CONCLUSION**

17 For the foregoing reasons, defendant Jenks’ motion to suppress (Dkt. #284) is
 18 GRANTED in part and DENIED in part. Jenks’ motion for a Franks hearing (Dkt. #297) is
 19 DENIED. The Court will issue a separate order on the suppression of Jenks’ 2002 Harley
 20 Davidson at the conclusion of the evidentiary hearing.

21
 22 DATED this 8th day of February, 2007.

23 

24 Robert S. Lasnik
 25 United States District Judge
 26

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